

Submitted Questions with Answers**1. Question:** Reference: C.3.d – Application Routing Tool

(A) Can USPTO provide samples of the output from this tool? (B) When was the tool first introduced into use at USPTO, and has the tool been updated/enhanced on a regular basis since its introduction?

Answer for (A):

Output samples from the Application Routing Tool (ART) cannot be provided at this time. However the Application Routing Tool, for a particular application, does provide results sorted by Group Art Unit (GAU) and/or Originating Class based upon a corresponding rank that has been assigned for that GAU or Class, respectively. For each application, the current USPTO system will only provide to the contractor the highest ranked GAU and class resulting from the ART query.

Answer for (B): ART was first introduced into use at the USPTO in late March 2004. There have been no substantive changes since its introduction.

2. Question: Reference: C.5.10

For each chemical, electrical, mechanical and plant application reviewed, the contractor will provide to the Government the following data (CLIN 0001, CLIN 0005, CLIN 0009, CLIN 0013, CLIN 0017, CLIN 0021, CLIN 0025, CLIN 0029, CLIN 0033, CLIN 0037). For each application in the normal publication cycle, the contractor must provide the required information within 30 calendar days of receiving the application. For each application in the special publication cycle, the contractor must provide the required information within 14 calendar days of receiving the application. Can USPTO provide estimates of the number or percentage of applications that will be in the special publication cycle for each of the contract periods?

Answer: The percentage of applications in the special publication cycle depends on a number of factors that cannot be accurately predicted. However, for the months of April 2002 through May 2005, the average number of applications in the special publication cycle was 53%. The monthly average varied from 43% to 72%.

3. Question: Reference: C.8 Government Furnished Equipment/Information.

(A) Can a Contractor bring its own PCs and servers onto USPTO premises? (B) Does the contractor have to use the PCs supplied by USPTO and if so, what would be the specification of those PCs and, in particular, their monitors? (C) How will the USPTO provide electronic input data? (D) Will it be held on a USPTO resource that the Contractor can pull data from, e.g. by FTP or a mounted filesystem, or will it be delivered to the contractor in some way? (E) Do Contractors have to input the completed work via the USPTO's interface as per the screenshots attached to the RFP or would it be possible for a Contractor to supply the completed data so that it can be uploaded to USPTO's systems programmatically?

Answer for (A): Yes. However, contractor owned equipment cannot have direct interface with USPTO Systems.

Answer for (B): At a minimum, the contractor must utilize the USPTO provided equipment to input the determined classification data. The equipment provided will be Pentium III based PCs with a shared printer. We anticipate providing 21" monitors.

Answer for (C): Section C.8 of the RFP states "The Government will provide the contractor with Government Furnished Information in the form of electronic and/or paper patent application documents. The electronic information may be provided in the form of TIFF and/or PDF images stored on a computer readable media as well as any text in Microsoft® Word or XML".

Answer for (D): The application information will be accessible through the USPTO Computers or, if requested by the contractor, it will be delivered to the contractor on site in the format described in Section C.8.

Answer for (E): Section C.5.10 of the RFP states "The contractor shall enter all required classification data into the USPTO-provided software application using Government Furnished Equipment". There will be no automated uploading of information to USPTO Systems. Please refer to Section L.3.1 paragraph 5 for future savings, including changes to existing systems.

4. Question: Reference: Other Direct Costs

Will USPTO establish a separate Contract Line Item Number (CLIN) for other direct costs (ODCs) that the parties may agree are compensable? If so, will those ODCs be considered in evaluation for award? It is normal practice in contracts, such as this one, which may generate compensable costs, to include a line item for other direct costs. See, e.g., AGAR 452.216-72 (ODCs evaluated for award on IDIQ contracts); AIDAR 732.111 (USAID fixed-unit-price IDIQ contracts to include provision for other direct costs, such as travel and transportation).

Answer: No separate CLIN will be created for ODCs. The contractor will only be compensated through the existing CLIN structure.

5. Question: Reference: Contract Type

Will USPTO consider this as a commercial-item contract, under FAR Part 12? Rationale: The services called for under this solicitation are commercial-type analysis services, which can be provided by personnel trained in the appropriate technologies, project management and patent systems, both here and abroad. These are, therefore, classic commercial-item services under FAR Part 12, per FAR 2.101, and we recommend that the contract appropriately should be constructed using the commercial-item clauses at FAR 52.212-1 et seq. We should note that USPTO's inclusion of FAR 52.227-3, Patent Indemnity, in the clauses incorporated by reference in Section I, reflects the commercial-item nature of this contract, and if this contract is *not* to be treated as a commercial-item contract, that clause should be deleted, per FAR 27.203-1. Furthermore, the clause at FAR 52.227-1, Authorization and Consent, should be included in the contract, per FAR 27.201-1.

Answer: Although some aspects of the services called for under this solicitation may be considered commercial in nature, the resulting contract will not be a FAR part 12 commercial item contract. Both FAR clauses 52.227-1 (Authorization and Consent) and 52.227-3 will be included in the solicitation.

6. Question: Reference: Solicitation § H.6, Organizational Conflict of Interest

To address and resolve any organizational conflicts of interest after award, to whom should any organizational conflict of interest mitigation plan be submitted? Can USPTO commit to prompt review and response on any such plan?

Answer: Any conflict of interest mitigation plan should be submitted to the address and Contracting Officer listed in Section L.4 of the RFP. The Contracting Officer and the Office of General Counsel will review any Conflict of Interest promptly.

7. Question: Reference: Solicitation § H.9 SOFTWARE INTEROPERABILITY

(A) Are there published standards for USPTO CIO interoperability and security requirements? If so, please provide them. (B) What will be the standards for approval of contractor software by the USPTO OCIO? (C) Please provide such standards, and an explanation of the approval process contemplated by USPTO. (D) Are there published standards for the demonstration of software operation contemplated by Section H.9? (E) If so, please provide such standards, and explain how such a demonstration is to be performed.

Answer for (A through E): The offeror's proposal should not be conditioned on any direct interface with existing USPTO Systems. Should such interface be permitted in the future, the offeror will be provided with the necessary standards.

8. Question: Reference: H.12 HOLD AND SAVE THE GOVERNMENT
HARMLESS FROM LIABILITY

The Contractor shall hold and save the Government, its officers, agents, and employees, harmless from liability of any nature or kind, including costs and expenses, for, or on account of infringement of any patent or copyright or any other unauthorized disclosure or use of any confidential secret, or proprietary data, process, product or invention, whether or not patentable, in the performance of this contract, including their disclosure or use by the Government consistent with rights in, or intent of, the contract. Where applicable, this shall include full indemnification of all costs and expenses.

Question: This special clause raises serious concerns, as it opens up significant potential liabilities for prospective contractors. We would recommend that this clause be the subject of discussions, to ensure that the clause is not overbroad, which could have profound anti-competitive impacts on this procurement. Is there a commercial basis for this clause? Alternatively, is there a basis for this clause in regulation, statute or USPTO practice, so that we can assess how it has been interpreted and applied in the past? Clause

Answer: Clause H.12 will be deleted from the RFP. See Amendment 0001 to the RFP.

9. Question: Who will enter the corrected data for any errors found during the Quality Assurance process?

Answer: The USPTO.

10. Question: The USPTO has placed great emphasis on reduction of pendency. In this regard, is there any consideration to providing additional incentives for providing the classifications in an accelerated timeframe to that specified in Section B.13.3 of the RFP?

Answer: Accelerating the timeframes described in the RFP would not result in improved pendency for the USPTO and, as a result, no additional incentive is contemplated.

11. Question: The USPTO currently occupies space in Crystal City, Arlington and in Alexandria. Where do you envision the performance of this contract to occur?

Answer: Currently, space is being allocated in Crystal City, Arlington, however this is subject to change.

12. Question: Can the contractor dispute classification errors? If so, what is the dispute process and how long does the contractor have to initiate it?

Answer: The USPTO will designate an agency representative after contract award to handle classification errors disputed by the contractor. The Government's determination of classification errors shall be final for all purposes unless disputed by the contractor within 14 calendar days of notice to the contractor of the determination. See Amendment 0001 to the RFP.

13. Question: Can the contractor contact the USPTO personnel for guidance concerning questions that may arise during the performance of this contract?

Answer: The contractor may only contact designated USPTO personnel. Under no circumstances may USPTO Patent Examining Corps staff or other non-designated USPTO personnel be contacted during the performance of this contract.